

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Difankh Asar,)	Civil Action No.: 6:20-633-BHH
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)	
v.)	<u>ORDER</u>
)	
Warden N. Barnes,)	
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On February 5, 2020, Petitioner Difankh Asar (“Petitioner”) filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. (ECF No. 1.) On April 16, 2020, Respondent Warden N. Barnes (“Respondent”) filed a motion to dismiss asking that the case be dismissed with prejudice or, in the alternative, for summary judgment. (ECF No. 15.) In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.), the matter was referred to a United States Magistrate Judge for review.

The Magistrate Judge issued an order on April 16, 2020, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Petitioner of the pending motion and the possible consequences if he failed to respond. (ECF No. 16.) On April 27, 2020, Petitioner filed a response in opposition (ECF No. 20), at which point this matter was ripe for review. The Magistrate Judge considered the parties’ submissions and the record in this case, and recommended that Respondent’s alternative motion for summary judgment (ECF No. 15) be granted. (See ECF No. 47.) Attached to the Report and Recommendation (“Report”) was a notice advising the parties of the right to file objections to the Magistrate Judge’s Report within fourteen days of receiving a copy. (*Id.* at 17.) To date, no objections have been filed.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the matter only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation’” (quoting Fed. R. Civ. P. 72 advisory committee’s note)).

Here, because no objections were filed, the Court has reviewed the record, the applicable law, and the findings and recommendations of the Magistrate Judge for clear error. After review, the Court finds no clear error and agrees with the Magistrate Judge that Petitioner has not shown a due process violation under *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974). Accordingly, the Court adopts and incorporates the Report (ECF No. 47), and grants Respondent’s alternate motion for summary judgment (ECF No. 15).

AND IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

October 1, 2020
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.